

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

DECISION AND ORDER

05-CR-6161L

v.

JOHN NICOLO,
DAVID FINNMAN,
CONSTANCE ROEDER,

Defendants.

At the conclusion of the Government's case and at the conclusion of all the proof, defendants moved for a judgment of acquittal. The Court reserved on all the motions, pursuant to FED. R. CRIM. P. 29(b) and submitted the case to the jury. On May 20, 2008, the jury returned its verdict and found all of the defendants guilty as charged. This constitutes my decision on the motions for judgments of acquittal.

All defendants moved for a judgment of acquittal on the grounds the evidence was insufficient. It is clear that I must base my decision concerning the sufficiency of the evidence on the proof as it stood at the close of the Government's case. At that time, there was more than sufficient evidence before the jury for a reasonable juror to find that the Government proved its case against the defendants by proof beyond a reasonable doubt.

There was relevant evidence from which the jury could reasonably find defendants guilty beyond a reasonable doubt, viewing the evidence in the light most favorable to the Government and keeping in mind that it is the exclusive function of the jury to determine the credibility of witnesses, resolve evidentiary conflicts and draw reasonable inferences.

Mr. Finnman also renewed his motion for severance. That motion is denied.

Counsel for Ms. Roeder addressed several matters, as well. Ms. Roeder also renewed motions for severance, discovery requests and for a bill of particulars. They are denied. In addition, Ms. Roeder moved for dismissal of the indictment based on prosecutorial misconduct before the grand jury, constructive amendment of the indictment and delay in prosecution. All are denied as without basis in fact or law. Any other motion not specifically referenced here is denied.

IT IS SO ORDERED.



DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
May 30, 2008.